Securities and Exchange Commission
PHILIPPINES

**SEC MEMORANDUM CIRCULAR NO. 24**
Series of 2019

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| TO | : | **PUBLIC COMPANIES AND REGISTERED ISSUERS** |
| SUBJECT | : | **CODE OF CORPORATE GOVERNANCE FOR PUBLIC COMPANIES AND REGISTERED ISSUERS** |

To promote the development of a strong corporate governance culture and keep abreast with recent developments in corporate governance best practices, the Commission, pursuant to its regulatory power under Section 179(d) of Republic Act No. 11232 otherwise known as the Revised Corporation Code of the Philippines, resolved to adopt the Code of Corporate Governance for Public Companies and Registered Issuers ("CG Code for PCs and RIs").

(1) The CG Code for PCs and RIs supersedes the following SEC Memorandum Circulars:

a) SEC Memorandum Circular No. 6, Series of 2009 (Revised Code of Corporate Governance);
b) SEC Memorandum Circular No. 9, Series of 2014 (Amendment to the Revised Code of Corporate Governance; and
c) SEC Memorandum Circular No. 4, Series of 2017 (Term Limits of Independent Directors).

The aforementioned Memorandum Circulars shall remain in effect for other covered companies, when applicable.

(2) All other relevant Memorandum Circulars on corporate governance shall remain in force and effect until further notice.

(3) All public companies and registered issuers shall submit a new Manual on Corporate Governance within six (6) months from the effectivity of this Memorandum Circular.

(4) Notwithstanding the issuance of the CG Code for PCs and RIs, public companies and registered issuers shall submit a Compliance Officer Certification on the extent of the company's compliance with Revised Code of Corporate Governance and Corporate Secretary Certification on record of attendance in board meetings for the covered year 2019 on or before 30 January 2020.

This Memorandum Circular shall take effect fifteen (15) days after its publication in two (2) newspapers of general circulation in the Philippines.

Pasay City, Philippines, 19 December 2019.

For the Commission:

**EMILIO B. AQUINO**
Chairperson

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Manila Standard, December 28, 2019

# CODE OF CORPORATE GOVERNANCE
# FOR PUBLIC COMPANIES AND REGISTERED ISSUERS

## INTRODUCTION

1. The Code of Corporate Governance for Public Companies and Registered Issuers is the next in the series of Corporate Governance Codes for different types of corporations under the supervision of the Securities and Exchange Commission. It is rooted in the same Corporate Governance principles provided in the Code of Corporate Governance for Publicly-Listed Companies with the same intention of raising the corporate governance standards of Philippine corporations consistent with the G20/OECD[1] Principles of Corporate Governance and other internationally recognized corporate governance principles.

2. The Code will adopt the "comply or explain" approach. This approach combines voluntary compliance with mandatory disclosure. Companies do not have to comply with the Code, but they must state in their annual corporate governance reports whether they comply with the Code provisions, identify any areas of non-compliance, and explain the reasons for non-compliance.

3. The Code is arranged as follows: Principles, Recommendations and Explanations.

   The **Principles** can be considered as high-level statements of corporate governance good practice and are applicable to all companies.

   The **Recommendations** are the objective criteria that are intended to identify the specific features of corporate governance good practices that are recommended for companies covered by this Code.

   The **Explanations** strive to provide companies with additional information on the recommended best practice.

4. This Code does not, in any way, prescribe a "one size fits all" framework. It is designed to allow companies some flexibility in establishing their corporate governance practices. Larger companies would generally be expected to follow most of the Code's provisions. Smaller companies may decide that the costs of some of the provisions outweigh the benefits, or are less relevant in their case. Hence, the Principle of Proportionality is considered in the application of the provisions of this Code.

5. Definition of Terms:

   **Board of Directors** – the governing body elected by the shareholders/members that exercises the corporate powers of a corporation, conducts all its business and controls its properties. For purposes of this Code, reference to Board of Directors and/or Directors shall also include reference to Board of Trustees and/or Trustees, respectively, in applicable cases.

[1] Organisation for Economic Co-operation and Development

**Corporate Governance** – the system of stewardship and control to guide organizations in fulfilling their long-term economic, moral, legal and social obligations towards their shareholders/members and other stakeholders.

Corporate governance is a system of direction, feedback and control using regulations, performance standards and ethical guidelines to hold the board of directors and Senior Management accountable for ensuring ethical behavior and reconciling long-term customer satisfaction with shareholder/member value to the benefit of all stakeholders and society.

Its purpose is to maximize the organization's long-term success, thereby creating sustainable value for its shareholders/members, other stakeholders and the nation.

**Enterprise Risk Management** – a process, effected by an entity's Board of Directors, Management and other personnel, applied in strategy setting and across the enterprise that is designed to identify potential events that may affect the entity, manage risks to be within its risk appetite, and provide reasonable assurance regarding the achievement of entity objectives.[2]

**Executive director** – a director who has executive responsibility of day-to-day operations of a part or the whole of the corporation.

**Independent director** – a person who is independent of Management and the controlling shareholder, and is free from any business or other relationship which could, or could reasonably be perceived to, materially interfere with his exercise of independent judgment in carrying out his responsibilities as a director.

**Internal control** – a process designed and effected by the entity's Board of Directors/ Trustees, Senior Management, and all levels of personnel to provide reasonable assurance on the achievement of objectives through efficient and effective operations; reliable, complete and timely financial and management of corporate information; and compliance with applicable laws, regulations, and the organization's policies and procedures.

**Management** – a group of executives given the authority by the Board of Directors/ Board of Trustees to implement the policies it has laid down in the conduct of the business of the corporation.

**Members** – the members of non-stock corporations.

**Non-executive director** – a director who has no executive responsibility and does not perform any work related to the day-to-day operations of the corporation.

**Non-Proprietary Right** – an interest, participation or privilege over a specific property of a corporation that allows the holder to use such property under certain terms and conditions. The holder, however, shall not be entitled to dividends from the corporation or to its assets upon its liquidation.

**Proprietary Right** – an interest, participation or privilege in a corporation which gives the holder the right to use the facilities and to receive dividends or earnings

[2] Committee of Sponsoring Organizations of the Treadway Commission (COSO Framework).

from the corporation. Upon the liquidation of the corporation, the holder shall have proportionate ownership rights over its assets.

**Public Company** – a company with assets of at least Fifty Million Pesos (Php50,000,000.00) and having two hundred (200) or more shareholders holding at least one hundred (100) shares each of equity securities.

**Registered Issuer** – a company that: (1) issues proprietary and/or non-proprietary shares/certificates; (2) issues equity securities to the public that are not listed in an Exchange; or (3) issues debt securities to the public that are required to be registered to the SEC, whether or not listed in an Exchange.

**Related parties** - covers the covered entity's directors, officers, substantial shareholders and their spouses and relatives within the fourth civil degree of consanguinity or affinity, legitimate or common-law, and other persons if these persons have control, joint control or significant influence over the covered entity. It also covers the covered entity's parent, subsidiary, fellow subsidiary, associate, affiliate, joint venture or an entity that is controlled, jointly controlled or significantly influenced or managed by a person who is a related party.

**Related Party Transactions** – a transfer of resources, services or obligations between a reporting entity and a related party, regardless of whether a price is charged. It should be interpreted broadly to include not only transactions that are entered into with related parties, but also outstanding transactions that are entered into with an unrelated party that subsequently becomes a related party.

**Significant Influence** - The power to participate in the financial and operating policy decisions of the company but has no control or joint control of those policies.

**Stakeholders** – any individual, organization or society at large who can either affect and/or be affected by the company's strategies, policies, business decisions and operations, in general. This includes, among others, non-proprietary certificate holders, customers, creditors, employees, suppliers, investors, as well as the government and the community in which the company operates.

## THE BOARD'S GOVERNANCE RESPONSIBILITIES

### 1. ESTABLISHING A COMPETENT BOARD

**Principle**

The company should be headed by a competent, working board to foster the long-term success of the corporation, and to sustain its competitiveness and growth in a manner consistent with its corporate objectives and the long-term best interests of its shareholders/members and other stakeholders.

**Recommendation 1.1**

The Board should be composed of directors with a collective working knowledge, experience or expertise that is relevant to the company's industry/sector. The Board should always ensure that it has an appropriate mix of competence and expertise and that its members remain qualified for their positions individually and collectively, to enable it to fulfill its roles and responsibilities and respond to the needs of the organization based on the evolving business environment and strategic direction.

**Explanation**

Competence can be determined from the collective knowledge, experience and expertise of each director that is relevant to the industry/sector that the company is in. A Board with the necessary knowledge, experience and expertise can properly perform its tasks and functions. In this regard, the Board sets qualification standards for its members to facilitate the selection of potential nominees for board seats, and to serve as a benchmark for the evaluation of its performance.

**Recommendation 1.2**

The Board should be headed by a competent and qualified Chairperson.

**Explanation**

The roles and responsibilities of the Chairperson should be contained in the Board Charter. These include, among others, the following:

a. Makes certain that the meeting's agenda focuses on strategic matters, including the overall risk appetite of the corporation, taking into account the developments in the business and regulatory environments, key governance concerns, and contentious issues that will significantly affect operations;

b. Guarantees that the Board receives accurate, timely, relevant, insightful, concise, and clear information to enable it to make sound decisions;

c. Facilitates discussions on key issues by fostering an environment conducive for constructive debate and leveraging on the skills and expertise of individual directors;

d. Ensures that the Board sufficiently challenges and inquires on reports submitted and representations made by Management;

e. Assures the conduct of proper orientation for first-time directors and continuing training opportunities for all directors; and

f. Makes sure that performance of the Board is evaluated at least once a year and discussed or followed up on if necessary.

**Recommendation 1.3**

The Company should have a policy on the training of directors, including an orientation program for first-time directors and relevant annual continuing training for all directors.

**Explanation**

The orientation program for first-time directors and relevant annual continuing training for all directors aim to promote effective board performance and continuing qualification of the directors in carrying out their duties and responsibilities.

The orientation program ensures that new members are appropriately apprised of their duties and responsibilities, before beginning their directorships, and throughout their tenure. The orientation program covers SEC-mandated topics on corporate governance and includes an introduction to the company's business, Articles of Incorporation and By-laws, and Code of Business Conduct and Ethics.

The annual continuing training program, on the other hand, makes certain that the directors are continuously informed of the developments in the business and regulatory environments, including emerging risks relevant to the company. The training can be on any matter relevant to the company, which could include training on audit, internal controls, risk management, sustainability and strategy. It is encouraged that companies assess their own training and development needs in determining the coverage of their continuing training program. For corporate governance trainings, the trainings can be conducted by SEC Accredited Institutional Training Providers.

It is suggested that the orientation program for first-time directors, in any company, be for at least eight (8) hours, while the annual continuing training be for at least four (4) hours.

**Recommendation 1.4**

The Board should have a policy on board diversity.

**Explanation**

Having a board diversity policy is a move to avoid groupthink and ensure that optimal decision-making is achieved. Groupthink is a mode of thinking in which individual members of small cohesive groups tend to accept a viewpoint or conclusion that represents a perceived group consensus, whether or not the group members believe it to be valid, correct, or optimal. Groupthink reduces the efficiency of collective problem solving within such groups.[3]

[3]Schmidt, Anna (2016), Encyclopædia Britannica, Inc. *Groupthink*. Retrieved from Encyclopædia Britannica Website, https://www.britannica.com/science/groupthink, last accessed 27 August 2019.

A board diversity policy is not limited to gender diversity. It also includes diversity in age, ethnicity, culture, skills, competence and knowledge. On gender diversity policy, a good example is to increase the number of female directors, including female independent directors (IDs).

**Recommendation 1.5**

The Board should ensure that it is assisted in its duties by a Corporate Secretary, who should be a separate individual from the Compliance Officer. The Corporate Secretary should not be a member of the Board of Directors and should annually attend a training on corporate governance.

**Explanation**

The Corporate Secretary is primarily responsible to the corporation and its shareholders/members, and not to the Chairperson or President of the Company and has, among others, the following duties and responsibilities:

a. Assists the Board and the Board committees in the conduct of their meetings (i.e. agenda setting, preparation of annual schedule of meetings and board calendar);

b. Safekeeps and preserves the integrity of the minutes of the meetings of the Board, Board committees and shareholders/members, as well as other official records of the corporation;

c. Keeps abreast of relevant laws, regulations, all governance issuances, industry developments and operations of the corporation, and advises the Board and the Chairperson on all relevant issues as they arise;

d. Works fairly and objectively with the Board, Management and shareholders/members and contributes to the flow of information between the Board and Management, the Board and its committees, and the Board and its shareholders/members as well as other stakeholders;

e. Advises on the establishment of board committees and their terms of reference;

f. Informs members of the Board, in accordance with the by-laws, of the agenda of their meetings at least five (5) working days before the date of the meeting, and ensures that the members have before them accurate information that will enable them to arrive at intelligent decisions on matters that require their approval;

g. Attends all Board meetings, except when justifiable causes, such as illness, death in the immediate family and serious accidents, prevent him from doing so;

h. Performs all required administrative functions;

i. Oversees the drafting of the by-laws and ensures that they conform with regulatory requirements; and

j. Performs such other duties and responsibilities as may be provided by the Board and the Commission.

**Recommendation 1.6**

The Board should ensure that it is assisted in its duties by a Compliance Officer, who should have a rank of Senior Vice President or an equivalent position with adequate stature and authority in the corporation. The Compliance Officer should not be a member of the Board of Directors and should annually attend a training on corporate governance.

**Explanation**

The Compliance Officer is a member of the company's Management team in charge of the compliance function. Similar to the Corporate Secretary, he is primarily liable to the corporation and its shareholders/members, and not to the Chairperson or President of the company. He has, among others, the following duties and responsibilities:

a. Ensures proper onboarding of new directors (i.e., orientation on the company's business, charter, articles of incorporation and by-laws, among others);

b. Monitors, reviews, evaluates and ensures the compliance by the corporation, its officers and directors with the relevant laws, this Code, rules and regulations and all governance issuances of regulatory agencies;

c. Reports to the Board if violations are found and recommends the imposition of appropriate disciplinary action;

d. Ensures the integrity and accuracy of all documentary and electronic submissions as may be allowed under SEC rules and regulations;

e. Appears before the SEC when summoned in relation to compliance with this Code and other relevant rules and regulations;

f. Collaborates with other departments within the company to properly address compliance issues, which may be subject to investigation;

g. Identifies possible areas of compliance issues and works towards the resolution of the same;

h. Ensures the attendance of board members and key officers to relevant trainings; and

i. Performs such other duties and responsibilities as may be provided by the Board and SEC.

## 2. ESTABLISHING CLEAR ROLES AND RESPONSIBILITIES OF THE BOARD

**Principle**

The fiduciary roles, responsibilities and accountabilities of the Board as provided under the law, the company's articles of incorporation and by-laws, and other legal pronouncements and guidelines should be clearly made known to all directors as well as to shareholders/members and other stakeholders.

**Recommendation 2.1**

The Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and all shareholders/members and all other stakeholders.

**Explanation**

There are two key elements of the fiduciary duty of board members: the duty of care and the duty of loyalty. The duty of care requires board members to act on a fully informed basis, in good faith, and with due diligence and care. The duty of loyalty is also of central importance; the board member should act in the interest of the company and all its shareholders/members, and not those of the controlling group or any other stakeholder. The fiduciary duty of the board is to promote the value of the corporation. The board must exercise their business judgment in considering and reconciling the interests of various stakeholders – including shareholders.

**Recommendation 2.2**

The Board should oversee the development of and approve the company's business and strategy, and monitor its implementation, in order to sustain the company's long-term viability and strength.

**Explanation**

Sound strategic policies and objectives translate to the company's proper identification and prioritization of its goals and guidance on how best to achieve them. This creates optimal value to the corporation.

**Recommendation 2.3**

The Board should be responsible for ensuring and adopting an effective succession planning program for directors, key officers and Management to ensure the continuous and consistent growth of the company. This should include adopting a retirement policy for directors and key officers.

**Explanation**

The smooth and efficient transition of company leadership to highly competent and qualified individuals is the goal of succession planning. It is the Board's responsibility to implement a process of appointing competent, professional, honest and highly motivated Management officers who can add value to the company. A good succession plan is linked to the documented roles and responsibilities for each position, and should start in objectively identifying the key knowledge, skills, and abilities required for the position.

**Recommendation 2.4**

The Board should align the remuneration of key officers and board members with the long-term interests of the company/organization. In doing so, it should formulate and adopt a policy specifying the relationship between remuneration and performance. In this regard, no director or trustee should participate in the determination of his own per diem or compensation.

**Explanation**

Companies are able to attract and retain the services of qualified and competent individuals if the level of remuneration is sufficient, in line with the business and risk strategy, objectives, values and measures are incorporated to prevent conflicts of interest. Remuneration policies promote a sound risk culture and encourage employees to act in the long-term interest of the company as a whole, rather than for themselves or their business lines only. Moreover, it is good practice for the Board to formulate and adopt a policy specifying the relationship between remuneration and performance, which includes specific financial and non-financial metrics to measure performance.
Key considerations in determining proper compensation include the following: (1) the level of remuneration is commensurate to the responsibilities of the role; (2) no director or trustee should participate in the determination of his own per diem or compensation; and (3) remuneration pay-out schedules should be sensitive to risk outcomes over a multi-year horizon.

For employees in control functions (e.g., risk, compliance and internal audit), their remuneration is determined independently from any business line being overseen, and their performance measures are based principally on the achievement of their objectives.

**Recommendation 2.5**

The Board should have a formal and transparent board nomination and election policy that should include how it accepts nominations from its shareholders/members and reviews the qualifications of nominated candidates. The policy should also include an assessment of the effectiveness of the Board's processes and procedures in the nomination, election, or replacement/removal of a director/trustee. In addition, its process of identifying the quality of directors should be aligned with the strategic direction of the company.

**Explanation**

It is the Board's responsibility to develop a policy on board nomination and election. A formal and transparent nomination and election policy clearly provides for the procedures on how the Board accepts nominations and encourages shareholders'/members' participation.

The nomination and election process also includes the review and evaluation of the qualifications of all persons nominated to the Board, including whether candidates: (1) possess the knowledge, skills, experience, and particularly in the case of non-executive directors (NEDs), the independence of mind given their responsibilities to the Board and in light of the entity's business and risk profile; (2) have a record of integrity and good repute; (3) have sufficient time to carry out their responsibilities; and (4) have the ability to promote a smooth interaction between board members. The process includes monitoring of the qualifications of the directors.

The following may be considered as grounds for the permanent disqualification of a director:

a. Any person convicted by final judgment or order by a competent judicial or administrative body of any crime that: (a) involves the purchase or sale of securities, as defined in the Securities Regulation Code; (b) arises out of the person's conduct as an underwriter, broker, dealer, investment adviser, principal distributor, mutual fund dealer, futures commission merchant, commodity trading advisor, or floor broker; or

(c) arises out of his fiduciary relationship with a bank, quasi-bank, trust company, investment house or as an affiliated person of any of them;

b. Any person who, by reason of misconduct, after hearing, is permanently enjoined by a final judgment or order of the SEC, Bangko Sentral ng Pilipinas (BSP) or any court or administrative body of competent jurisdiction from: (a) acting as underwriter, broker, dealer, investment adviser, principal distributor, mutual fund dealer, futures commission merchant, commodity trading advisor, or floor broker; (b) acting as director or officer of a bank, quasi-bank, trust company, investment house, or investment company or as an affiliated person of any of them; (c) engaging in or continuing any conduct or practice in any of the capacities mentioned in sub-paragraphs (a) and (b) above, or willfully violating the laws that govern securities and banking activities.

   The disqualification should also apply if (a) such person is the subject of an order of the SEC, BSP or any court or administrative body denying, revoking or suspending any registration, license or permit issued to him under the Revised Corporation Code of the Philippines, Securities Regulation Code or any other law administered by the SEC or BSP, or under any rule or regulation issued by the Commission or BSP; (b) such person has otherwise been restrained to engage in any activity involving securities and banking; or (c) such person is the subject of an effective order of a self-regulatory organization suspending or expelling him from membership, participation or association with a member or participant of the organization;

c. Any person convicted by final judgment or order by a court, or competent administrative body of an offense involving moral turpitude, fraud, embezzlement, theft, estafa, counterfeiting, misappropriation, forgery, bribery, false affirmation, perjury or other fraudulent acts;

d. Any person who has been adjudged by final judgment or order of the SEC, BSP, court, or competent administrative body to have willfully violated, or willfully aided, abetted, counseled, induced or procured the violation of any provision of the Corporation Code, Securities Regulation Code or any other law, rule, regulation or order administered by the SEC or BSP;

e. Any person judicially declared as insolvent;

f. Any person found guilty by final judgment or order of a foreign court or equivalent financial regulatory authority for acts, violations or misconduct similar to any of the acts, violations or misconduct enumerated above;

g. Conviction by final judgment of an offense punishable by imprisonment for more than six years, or a violation of the Revised Corporation Code of the Philippines and Securities Regulation Code committed within five years prior to the date of his election or appointment; and

h. Other grounds as the SEC may provide pursuant to the provisions of the Revised Corporation Code of the Philippines, Securities Regulation Code and other related laws.

In addition, the following may be grounds for temporary disqualification of a director:

a. Absence in more than fifty percent (50%) of all regular and special meetings of the Board during his incumbency, or any 12-month period during the said incumbency,

unless the absence is due to illness, death in the immediate family or serious accident. The disqualification should apply for purposes of the succeeding election;

b. Dismissal, termination or removal for cause as director of any publicly-listed company, public company, registered issuer of securities and holder of a secondary license from the Commission. The disqualification should be in effect until he has cleared himself from any involvement in the cause that gave rise to his dismissal, termination or removal;

c. If the beneficial equity ownership of an independent director (ID) in the corporation or its subsidiaries and affiliates exceeds two percent (2%) of its subscribed capital stock. The disqualification from being elected as an ID is lifted if the limit is later complied with; and

d. If any of the judgments or orders cited in the grounds for permanent disqualification has not yet become final.

**Recommendation 2.6**

The Board should have the overall responsibility in ensuring that there is a policy and system governing related party transactions (RPTs) and other unusual or infrequently occurring transactions, particularly those which pass certain thresholds of materiality. The policy should include the appropriate review and approval of material RPTs, which guarantee fairness and transparency of the transactions.

**Explanation**

Ensuring the integrity of related party transactions (RPTs) is an important fiduciary duty of the director. It is the Board's role to initiate policies and measures geared towards promotion of transparency, prevention of abuse, and protection of the interest of all shareholders/members. One such measure is requiring material RPTs to be approved by at least two-thirds (2/3) of the Board, with majority of the independent directors approving the transaction, in accordance with the provisions of the Revised Corporation Code of the Philippines, SEC issuances and other related laws. Other measures include ensuring that transactions occur at market prices, at arm's-length basis and under conditions that protect the rights of all shareholders/members.

The following are suggestions for the content of the RPT Policy:

- Identification of related parties;
- Coverage of RPT policy;
- Guidelines in ensuring arm's-length terms;
- Identification and prevention or management of potential or actual conflicts of interest which may arise;
- Adoption of materiality thresholds, as well as internal limits for individual and aggregate exposures;
- Approval of material RPTs based on the company's materiality threshold;
- Disclosure requirement of material RPTs;
- Self-assessment and periodic review of policy;
- Whistle-blowing mechanisms; and
- Restitution of losses and other remedies for abusive RPTs.

In addition, the company is given the discretion to set their materiality threshold at a level where omission or misstatement of the transaction could pose a significant risk to the company and influence its economic decision. The SEC may direct a company to reduce its materiality threshold or amend excluded transactions if the SEC deems that the threshold or exclusion is inappropriate considering the company's size, risk profile, and risk management systems.

Depending on the materiality threshold, approval of Management, the Board or the shareholders may be required. In cases where the Board and/or shareholders'/members' approval is required, it is good practice for interested directors and/or shareholders/members, respectively, to abstain and let the disinterested parties decide.

**Recommendation 2.7**

The Board should be primarily responsible for approving the selection and assessing the performance of the Management led by the Chief Executive Officer (CEO) or his equivalent, and control functions led by their respective heads (Chief Risk Officer, Chief Compliance Officer, and Chief Audit Executive, as may be applicable).

**Explanation**

It is the responsibility of the Board to appoint a competent Management team at all times, monitor and assess the performance of the Management team based on established performance standards that are consistent with the company's strategic objectives, and conduct a regular review of the company's policies with the management team. In the selection process, fit and proper standards are to be applied on key personnel and due consideration is given to integrity, technical expertise and experience in the company's business, either current or planned.

**Recommendation 2.8**

The Board should establish an effective performance evaluation framework, which includes the standard or criteria for assessment, that will ensure that the Management, including the Chief Executive Officer or his equivalent, and personnel's performance is at par with the standards set by the Board and Senior Management.

**Explanation**

Results of performance evaluation is oftentimes linked to other human resource activities such as training and development, remuneration, and succession planning. These form part of the assessment of the continuing qualification, fitness, and propriety of the Management, and personnel in carrying out their respective duties and responsibilities.

**Recommendation 2.9**

The Board should oversee that an appropriate internal control system is in place, including setting up a mechanism for monitoring and managing potential/actual conflicts of interest of board members, management, and shareholders/members. The Board should also adopt an Internal Audit Charter.

**Explanation**

In the performance of the Board's oversight responsibility, the minimum internal control mechanisms include overseeing the implementation of the key control functions, such as

risk management, compliance and internal audit, and reviewing the corporation's human resource policies, conflict of interest situations, compensation program for employees and Management succession plan.

**Recommendation 2.10**

The Board should oversee that a sound Enterprise Risk Management framework is in place to effectively identify, monitor, assess and manage key business risks. The risk management framework should guide the Board in identifying units/business lines and enterprise-level risk exposures, as well as the effectiveness of risk management strategies.

**Explanation**

Risk management policy is part and parcel of a corporation's business strategy. The Board is responsible for defining the company's level of risk tolerance and providing oversight over its risk management policies and procedures.

**Recommendation 2.11**

The Board should have a Board Charter that formalizes and clearly states its roles, responsibilities and accountabilities in carrying out its fiduciary duties. The Board Charter should serve as a guide to the directors in the performance of their functions and should be made publicly available.

**Explanation**

The Board Charter guides the directors on how to discharge their functions. It provides the standards for evaluating the performance of the Board. The Board Charter also contains the roles and responsibilities of the Chairperson.

## 3. ESTABLISHING BOARD COMMITTEES

**Principle**

Board committees should be set up to the extent possible to support the effective performance of the Board's functions, particularly with respect to audit, risk management, compliance and other key corporate governance concerns, such as nomination and remuneration. The composition, functions and responsibilities of all the board committees should be contained in their respective board committee charters.

**Recommendation 3.1**

The Board should establish board committees that focus on specific board functions to aid in the optimal performance of its roles and responsibilities. The Board committees should be composed only of board members.

**Explanation**

Board committees such as the Audit Committee, Corporate Governance Committee, and Board Risk Oversight Committee are necessary to support the Board in the effective performance of its functions. The establishment of the same, or any other committees that the company deems necessary, allows for concentration of focus in specific issues and leads to a better management of the Board's workload. The type of board committees to

be established by a company would depend on its size, risk profile, nature and complexity of operations. However, if the committees are not established, the functions of these committees may be carried out by the whole board or by any other committee.

**Recommendation 3.2**

The Board should establish an Audit Committee to enhance its oversight capability over the company's financial reporting, internal control system, internal and external audit processes, and compliance with applicable laws and regulations. The committee should be composed of at least three (3) appropriately qualified non-executive directors, the majority of whom, including the Chairperson, should be independent directors. All of the members of the committee must have relevant background, knowledge, skills, and/or experience in the areas of accounting, auditing and finance. The Chairperson of the Audit Committee should not be the Chairperson of the Board or of any other committees.

**Explanation**

The Audit Committee is responsible for overseeing the Senior Management in establishing and maintaining an adequate, effective and efficient internal control framework. It ensures that systems and processes are designed to provide assurance in areas including reporting, monitoring compliance with laws, regulations and internal policies, efficiency and effectiveness of operations, and safeguarding of assets.

The Audit Committee has the following duties and responsibilities, among others:

a. Recommends the approval of the Internal Audit (IA) Charter, which formally defines the responsibilities, powers and authority of the IA Department, the audit plan of the IA Department, as well as oversees the implementation of the IA Charter;

b. Through the IA Department, monitors and evaluates the adequacy and effectiveness of the corporation's internal control system, integrity of financial reporting, and security of physical and information assets. Well-designed internal control procedures and processes that will provide a system of checks and balances should be in place in order to: (a) safeguard the company's resources and ensure their effective utilization, (b) prevent occurrence of fraud and other irregularities, (c) protect the accuracy and reliability of the company's financial data, and (d) ensure compliance with applicable laws and regulations;

c. Oversees the IA Department, and recommends the appointment and removal of an IA head as well as his qualifications, and grounds for appointment and removal. The Audit Committee should also approve the terms and conditions for outsourcing internal audit services, if applicable;

d. Establishes and identifies the reporting line of the Internal Auditor to enable him to properly fulfill his duties and responsibilities. For this purpose, he should directly report to the Audit Committee;

e. Monitors the Management's responsiveness to the Internal Auditor's findings and recommendations;

f. Prior to the commencement of the audit, discusses with the External Auditor the nature, scope and expenses of the audit, and ensures the proper coordination if more

than one audit firm is involved in the activity to identify proper coverage and minimize duplication of efforts;

g. Evaluates and determines the non-audit work, if any, of the External Auditor, and periodically reviews the non-audit fees paid to the External Auditor in relation to the total fees paid and the corporation's overall consultancy expenses. The Audit Committee should disallow any non-audit work that will conflict with the duties of an External Auditor or may pose a threat to his independence[4]. The non-audit work, if allowed, should be disclosed in the corporation's Annual Report and Annual Corporate Governance Report;

h. Reviews and approves the Interim and Annual Financial Statements before their submission to the Board, with particular focus on the following matters:

- Any change/s in accounting policies and practices
- Areas where a significant amount of judgment has been exercised
- Significant adjustments resulting from the audit
- Going concern assumptions
- Compliance with accounting standards
- Compliance with tax, legal and regulatory requirements

i. Reviews the recommendations in the External Auditor's management letter;

j. Performs oversight functions over the corporation's Internal and External Auditors and ensures their independence and unrestricted access to all records, properties and personnel to enable them to perform their respective audit functions taking into consideration relevant Philippine professional and regulatory requirements;

k. Coordinates, monitors and facilitates compliance with laws, rules and regulations;

l. Recommends to the Board the appointment, reappointment, removal and fees of the External Auditor, duly accredited by the Commission, who undertakes an independent audit of the corporation, and provides an objective assurance on the manner by which the financial statements should be prepared and presented to the shareholders;

m. Evaluates on an ongoing basis existing relations between and among businesses and counterparties to ensure that all related parties are continuously identified, RPTs are monitored, the Related Party Registry is updated to capture subsequent changes in relationships with counterparties (from non-related to related and vice versa);

n. In case of the absence of a Related Party Transactions (RPTs) Committee, evaluates all RPTs to ensure that these are not undertaken on more favorable economic terms (e.g., price, commissions, interest rates, fees, tenor, collateral requirement) to such related parties than similar transactions with non-related parties under similar circumstances and that no corporate or business resources of the company are misappropriated or misapplied;

o. In case of the absence of an RPT Committee:

[4]As defined under the Code of Ethics for Professional Accountants.

- Determines any potential reputational risk issues that may arise as a result of or in connection with RPTs. In evaluating RPTs, the Committee takes into account, among others, the following:

    1. The related party's relationship to the company and interest in the transaction;
    2. The material facts of the proposed RPT, including the proposed aggregate value of such transaction;
    3. The benefits to the corporation of the proposed RPT;
    4. The availability of other sources of comparable products or services; and
    5. An assessment of whether the proposed RPT is undertaken on terms and conditions that are comparable to the terms generally available to an unrelated party under similar circumstances. The company should have an effective price discovery system in place and exercise due diligence in determining a fair price for RPTs.

- Ensures that appropriate disclosure is made, and/or information is provided to regulating and supervising authorities relating to the company's RPT exposures, and policies on potential and/or actual conflicts of interest. The disclosure should include information on the approach to managing material conflicts of interest that are inconsistent with such policies, and conflicts that could arise as a result of the company's affiliation or transactions with other related parties;

- Reports to the Board of Directors on a regular basis, the status and aggregate exposures to each related party, as well as the total amount of exposures to all related parties;

- Ensures that transactions with related parties, including write-off of exposures are subject to a periodic independent review or audit process;

- Oversees the implementation of the system for identifying, monitoring, measuring, controlling, and reporting RPTs, including a periodic review of RPT policies and procedures; and

p. Performs the functions of the Board Risk Oversight Committee, as provided under Recommendations 3.4, in the absence thereof.

q. Meets internally and with the Board at least once every quarter without the presence of the CEO or other Management team members, and periodically meets with the head of the IA.

**Recommendation 3.3**

The Board should establish a Corporate Governance Committee tasked to assist the Board in the performance of its corporate governance responsibilities, including the functions that were formerly assigned to the Nomination and Remuneration Committee. It should be composed of at least three (3) directors, majority of whom should be independent directors, including the Chairperson.

**Explanation**

The Corporate Governance Committee (CG Committee) is tasked with ensuring compliance with and proper observance of corporate governance principles and practices. It has the following duties and functions, among others:

a. Oversees the implementation of the corporate governance framework and periodically reviews the said framework to ensure that it remains appropriate in light of material changes to the corporation's size, complexity of operations and business strategy, as well as its business and regulatory environments;

b. Oversees the periodic performance evaluation of the Board and its committees as well as the executive management, and conducts an annual evaluation of the said performance;

c. Ensures that the results of the Board evaluation are discussed, and that concrete action plans are developed and implemented to address the identified areas for improvement;

d. Recommends the continuing education/training programs for directors, assignment of tasks/projects to board committees, succession plan for the board members and senior officers, and remuneration packages for corporate and individual performance;

e. Adopts corporate governance policies and ensures that these are reviewed and updated regularly, and consistently implemented in form and substance;

f. Proposes and plans relevant trainings for the members of the Board;

g. Determines the nomination and election process for the company's directors and defines the general profile of board members that the company may need, and ensures that appropriate knowledge, competencies and expertise that complement the existing skills of the Board are adopted as standards and criteria for nomination and election; and

h. Establishes a formal and transparent procedure for determining the remuneration of directors and officers that is consistent with the corporation's culture and business strategy as well as the business environment in which it operates.

The establishment of a Corporate Governance Committee does not preclude companies from establishing separate Remuneration or Nomination Committees, if they deem desirable or necessary.

**Recommendation 3.4**

Subject to a corporation's size, risk profile, nature and complexity of operations, the Board should establish a separate Board Risk Oversight Committee (BROC) that should be responsible for the oversight of a company's Enterprise Risk Management System to ensure its functionality and effectiveness. The BROC should be composed of at least three (3) directors, the majority of whom should be independent directors, including the Chairperson. At least one member of the committee must have relevant thorough knowledge and experience on risk and risk management.

**Explanation**

The establishment of a Board Risk Oversight Committee (BROC) is particularly recommended for issuers of debt securities and for companies with a high risk profile.

Enterprise Risk Management (ERM) is integral to an effective corporate governance process and the achievement of a company's value creation objectives. Thus, the BROC has the responsibility to assist the Board in ensuring that there is an effective and integrated risk management process in place. With an integrated approach, the Board and top management will be in a position to make well-informed decisions, having taken into consideration risks related to significant business activities, plans and opportunities.

The BROC has the following duties and responsibilities, among others:

a. Develops a formal ERM plan which contains the following elements: (a) common language or register of risks, (b) well-defined risk management goals and objectives, (c) uniform processes of assessing risks and developing strategies to manage prioritized risks, (d) designing and implementing risk management strategies, and (e) continuing assessments to improve risk strategies, processes and measures;

b. Oversees the implementation of the ERM plan through a Management Risk Oversight Committee. The BROC conducts regular discussions on the company's prioritized and residual risk exposures based on regular risk management reports and assesses how the concerned units or offices are addressing and managing these risks;

c. Evaluates the risk management plan to ensure its continued relevance, comprehensiveness and effectiveness. The BROC revisits defined risk management strategies, looks for emerging or changing material exposures, and keeps abreast of significant developments that seriously impact the likelihood of harm or loss;

d. Advises the Board on its risk appetite levels and risk tolerance limits;

e. Reviews at least annually the company's risk appetite levels and risk tolerance limits based on changes and developments in the business, the regulatory framework, the external economic and business environment, and major events which may have occurred in the company;

f. Assesses the probability of each identified risk becoming a reality and estimates its possible significant financial impact and likelihood of occurrence. Priority areas of concern are those risks that are the most likely to occur and to impact the performance and stability of the corporation and its stakeholders;

g. Oversees the Management's activities in managing credit, market, liquidity, operational, legal and other risk exposures of the corporation. This function includes regularly receiving information on risk exposures and risk management activities from Management; and

h. Reports to the Board on a regular basis, or as deemed necessary, the company's material risk exposures, the actions taken to reduce the risks, and recommends further action or plans, as necessary.

**Recommendation 3.5**

All established committees should have Committee Charters stating in plain terms their respective purposes, memberships, structures, operations, reporting processes, resources and other relevant information. The Charters should provide the standards for evaluating the performance of the Committees and its members.

**Explanation**

The Committee Charter clearly defines the roles, accountabilities, powers and authority of each committee to avoid any overlapping functions, which aims at having a more effective board for the company. This can also be used as basis for the assessment of committee performance.

## 4. FOSTERING COMMITMENT

**Principle**

To show full commitment to the company, the directors should devote the time and attention necessary to properly and effectively perform their duties and responsibilities, including sufficient time to be familiar with the corporation's business.

**Recommendation 4.1**

The directors should attend and actively participate in all meetings of the Board, Committees, and shareholders/members in person or through tele-/videoconferencing conducted in accordance with the rules and regulations of the Commission, except when justifiable causes, such as, illness, death in the immediate family and serious accidents, prevent them from doing so. In Board and Committee meetings, the directors should review meeting materials and if called for, ask the necessary questions or seek clarifications and explanations.

**Explanation**

A director's commitment to the company is evident in the amount of time he dedicates to performing his duties and responsibilities, which includes his presence in all meetings of the Board, Committees and shareholders/members. In this way, the director is able to effectively perform his duty to the company and its shareholders/members.

The absence of a director in more than fifty percent (50%) of all regular and special meetings of the Board during his incumbency is a ground for disqualification in the succeeding election, unless the absence is due to illness, death in the immediate family, serious accident or other unforeseen or fortuitous events.

**Recommendation 4.2**

The non-executive directors of the Board should not concurrently serve as directors to more than ten (10) public companies and/or registered issuers. However, the maximum concurrent directorships shall be five (5) public companies and/or registered issuers if the director also sits in at least three (3) publicly-listed companies.

**Explanation**

Being a director necessitates a commitment to the corporation. Hence, there is a need to set a limit on board directorships. This ensures that the members of the board are able to sufficiently prepare for meetings, effectively commit themselves to perform their roles and responsibilities, and regularly update their knowledge and enhance their skills. A maximum number of board directorships is recommended since sitting on the board of too many companies may interfere with the optimal performance of board members, in that they may not be able to contribute enough time to keep abreast of the corporation's operations and to attend and actively participate during meetings.

**Recommendation 4.3**

A director should notify the Board where he is an incumbent director before accepting a directorship in another company.

**Explanation**

The Board expects a director to devote sufficient time and attention to his duties and responsibilities. Hence, it is important that a director notifies his incumbent Board before accepting a directorship in another company. This is for the company to be able to assess if his present responsibilities and commitment to the company will be affected and if the director can still adequately provide what is expected of him.

## 5. REINFORCING BOARD INDEPENDENCE

**Principle**

The Board should endeavor to exercise an objective and independent judgment on all corporate affairs.

**Recommendation 5.1**

The Board should be composed of a majority of non-executive directors who possess the necessary qualifications to effectively participate and help secure objective, independent judgment on corporate affairs and to carry out proper checks and balances.

**Explanation**

The right combination of non-executive directors (NEDs), which include independent directors, and executive directors, ensures that no director or small group of directors can dominate the decision-making process. Further, a board composed of a majority of NEDs assures protection of the company's interest over the interest of the individual shareholders.

**Recommendation 5.2**

The Board should have at least two (2) independent directors, or such number as to constitute at least one-third of the members of the Board, whichever is higher.

**Explanation**

The presence of independent directors (IDs) in the Board ensures the exercise of independent judgment on corporate affairs and proper oversight of managerial performance, including prevention of conflict of interests and balancing of competing demands of the corporation. There is increasing global recognition that more IDs in the Board lead to more objective decision-making, particularly in conflict of interest situations. In addition, experts have recognized that there are varying opinions on the optimal number of IDs in the board. However, the ideal number ranges from one-third to a substantial majority.

**Recommendation 5.3**

The Board should ensure that its independent directors possess the necessary qualifications and none of the disqualifications for an independent director to hold the position.

**Explanation**

The independent directors (IDs) need to possess a good general understanding of the industry that the company engages in. Further, it is worthy to note that independence and competence should go hand-in-hand. It is therefore important that the non-executive directors, including IDs, possess the qualifications and stature that would enable them to effectively and objectively participate in the deliberations of the Board.

An ID refers to a person who, ideally:

a. Is not, or has not been a senior officer or employee of the covered company unless there has been a change in the controlling ownership of the company;

b. Is not, and has not been in the two (2) years immediately preceding the election, a director of the covered company; a director, officer, employee of the covered company's subsidiaries, associates, affiliates or related companies; or a director, officer, employee of the covered company's substantial shareholders and its related companies;

c. Has not been appointed in the covered company, its subsidiaries, associates, affiliates or related companies as Chairperson "Emeritus," "Ex-Officio" Directors/Officers or Members of any Advisory Board, or otherwise appointed in a capacity to assist the Board in the performance of its duties and responsibilities within two (2) years immediately preceding his election;

d. Is not an owner of more than two percent (2%) of the outstanding shares of the covered company, its subsidiaries, associates, affiliates or related companies;

e. Is not a relative of a director, officer, or substantial shareholder of the covered company or any of its related companies or of any of its substantial shareholders. For this purpose, relatives include spouse, parent, child, brother, sister and the spouse of such child, brother or sister;

f. Is not acting as a nominee or representative of any director of the covered company or any of its related companies;

g. Is not a securities broker-dealer of listed companies and registered issuers of securities. "Securities broker-dealer" refers to any person holding any office of trust and responsibility in a broker-dealer firm, which includes, among others, a director, officer, principal shareholder, nominee of the firm to the Exchange, an associated person or salesman, and an authorized clerk of the broker or dealer;

h. Is not retained, either in his personal capacity or through a firm, as a professional adviser, auditor, consultant, agent or counsel of the covered company, any of its related companies or substantial shareholder, or is otherwise independent of Management and free from any business or other relationship within the two (2) years immediately preceding the date of his election;

i. Does not engage or has not engaged, whether by himself or with other persons or through a firm of which he is a partner, director or substantial shareholder, in any transaction with the covered company or any of its related companies or substantial shareholders, other than such transactions that are conducted at arm's length and could not materially interfere with or influence the exercise of his independent judgment within the two (2) years immediately preceding the date of his election;

j. Is not affiliated with any non-profit organization that receives significant funding from the covered company or any of its related companies or substantial shareholders; and

k. Is not employed as an executive officer of another company where any of the covered company's executives serve as directors.

Related companies, as used in this section, refer to (a) the covered entity's holding/parent company; (b) its subsidiaries; and (c) subsidiaries of its holding/parent company.

**Recommendation 5.4**

The Board's independent directors should serve for a maximum cumulative term of nine (9) years. After which, the independent director should be perpetually barred from re-election as such in the same company, but may continue to qualify for nomination and election as a non-independent director. In the instance that a company wants to retain an independent director who has served for nine (9) years, the Board should provide meritorious justification/s and seek shareholders'/members' approval during the annual shareholders'/members' meeting.

**Explanation**

Service in a board for a long duration may impair a director's ability to act independently and objectively. Hence, the tenure of an Independent Director (ID) is set to a cumulative term of nine (9) years. The IDs who have served for nine (9) years may continue as a non-independent director of the company. Reckoning of the cumulative nine-year term is from 2012.

Any term beyond nine (9) years for an ID is subjected to particularly rigorous review, taking into account the need for progressive change in the Board to ensure an appropriate balance of skills and experience. However, the shareholders/members may, in exceptional cases, choose to re-elect an ID who has served for nine (9) years. In such instances, the Board must provide a meritorious justification for the re-election and seek shareholders'/members' approval during the annual shareholders'/members' meeting.

**Recommendation 5.5**

The positions of Chairperson of the Board and Chief Executive Officer or its equivalent position, should be held by separate individuals and each should have clearly defined responsibilities.

**Explanation**

To avoid conflict or a split board and to foster an appropriate balance of power, increased accountability and better capacity for independent decision-making, it is recommended that the positions of Chairperson and Chief Executive Officer (CEO) be held by different individuals. This type of organizational structure facilitates effective decision making and good governance. In addition, the division of responsibilities and accountabilities between the Chairperson and CEO is clearly defined and delineated and disclosed in the Board Charter.

The CEO has the following roles and responsibilities, among others:

a. Implements the corporation's strategic plan on the direction of the business;

b. Communicates and implements the corporation's vision, mission, values and overall strategy as formulated by the board and promotes any organization or stakeholder change in accordance with the same;

c. Oversees the operations of the corporation and manages human and financial resources in accordance with the strategic plan;

d. Has a good working knowledge of the corporation's industry and market and keeps up-to-date with its core business purpose;

e. Directs, evaluates and guides the work of the key officers of the corporation;

f. Manages the corporation's resources prudently and ensures a proper balance of the same;

g. Provides the Board with timely information and interfaces between the Board and the employees;

h. Builds the corporate culture and motivates the employees of the corporation; and

i. Serves as the link between internal operations and external stakeholders.

The roles and responsibilities of the Chairperson are provided under Recommendation 1.2.

**Recommendation 5.6**

The Board should designate a lead director among the independent directors if the Chairperson of the Board is not independent, including if the positions of the Chairperson of the Board and Chief Executive Officer or its equivalent are held by one person.

**Explanation**

In cases where the Chairperson is not independent and where the roles of Chair and CEO are combined, putting in place proper mechanisms ensures independent views and perspectives. More importantly, it prevents abuse of power and authority, and potential and/or actual conflict of interest. A suggested mechanism is the appointment of a strong "lead director" among the independent directors. This lead director has sufficient authority to lead the Board in cases where management has clear conflicts of interest.

The functions of the lead director include, among others, the following:

a. Serves as an intermediary between the Chairperson and the other directors when necessary;
b. Convenes and chairs meetings of the NEDs; and
c. Contributes to the performance evaluation of the Chairperson, as required.

**Recommendation 5.7**

A director with a material or potential interest in any transaction affecting the corporation should fully disclose his adverse interest, abstain from taking part in the deliberations for the same and recuse from voting on the approval of the transaction.

**Explanation**

The abstention of a director from participating in a meeting when related party transactions, self-dealings or any transactions or matters on which he has a material interest are taken up ensures that he has no influence over the outcome of the deliberations. The fundamental principle to be observed is that a director does not use his position to profit or gain some benefit or advantage for himself and/or his related interests.

**Recommendation 5.8**

The non-executive directors should have separate periodic meetings with the external auditor and heads of the internal audit, compliance and risk functions, without any executive directors present to ensure that proper checks and balances are in place within the corporation. The meetings should be chaired by the lead independent director, if applicable.

**Explanation**

The non-executive directors (NEDs) are expected to constructively scrutinize the Management's performance, particularly in meeting the company's goals and objectives. Further, it is their role to satisfy themselves on the integrity of the corporation's internal control and effectiveness of the risk management systems. This role can be better performed by the NEDs if they are provided access to the external auditor and heads of the IA, compliance and risk functions, as well as to other key officers of the company without any executive directors present. If the company has a lead independent director, he should lead and preside over the meeting.

## 6. ASSESSING BOARD PERFORMANCE

### Principle

The best measure of the Board's effectiveness is through an assessment process. The Board should regularly carry out evaluations to appraise its performance as a body, and assess whether it possesses the right mix of backgrounds and competencies.

### Recommendation 6.1

The Board should conduct an annual self-assessment of its performance, including the performance of the Chairperson, individual members and committees.

### Explanation

Board assessment helps the directors to thoroughly review their performance and understand their roles and responsibilities. The periodic review and assessment of the Board's performance as a body, the board committees, the individual directors, and the Chairperson show how the aforementioned should perform their responsibilities effectively. In addition, it provides a means to assess a director's attendance at board and committee meetings, participation in boardroom discussions and manner of voting on material issues.

### Recommendation 6.2

The Board should have in place a system that provides, at the minimum, criteria and process to determine the performance of the Board, the individual directors, committees and such system should allow for a feedback mechanism from the shareholders/members.

### Explanation

Disclosure of the criteria, process and individual and collective results of the assessment ensures transparency and allows shareholders and other stakeholders to determine if the directors are performing their responsibilities to the company. Companies are given the discretion to determine the assessment criteria and process, which should be based on the mandates, functions, roles and responsibilities provided in the Board and Committee Charters. In establishing the criteria, attention is given to the values, principles and skills required by the company. The Corporate Governance Committee oversees the evaluation process.

## 7. STRENGTHENING BOARD ETHICS

### Principle

Board directors are duty-bound to apply high ethical standards, taking into account the interests of all stakeholders.

### Recommendation 7.1

The Board should adopt a Code of Business Conduct and Ethics, which would provide standards for professional and ethical behavior, as well as articulate acceptable and unacceptable conduct and practices in internal and external dealings of board members.

The Code should be properly disseminated to all the members of the Board. It should also be disclosed and made available to the public through the company website.

**Explanation**

A Code of Business Conduct and Ethics formalizing ethical values is an important tool to instill an ethical corporate culture that pervades throughout the company, especially on the board level. The main responsibility to create and design a Code of Business Conduct and Ethics suitable to the needs of the company and the culture by which it operates lies with the Board.

**Recommendation 7.2**

The Board should ensure the proper and efficient implementation and monitoring of compliance with the Code of Business Conduct and Ethics.

**Explanation**

The Board has the primary duty to make sure that the internal controls are in place to ensure each board member's compliance with the Code of Business Conduct and Ethics. This includes the creation of efficient communication channels, which aid and encourage employees, customers, suppliers and creditors to raise concerns on potential unethical/unlawful behavior of board members without fear of retribution.

## DISCLOSURE AND TRANSPARENCY

## 8. ENHANCING COMPANY DISCLOSURE POLICIES AND PROCEDURES

**Principle 8**

The Board should establish corporate disclosure policies and procedures that are practical and in accordance with generally accepted best practices and regulatory expectations.

**Recommendation 8.1**

The Board should establish corporate disclosure policies and procedures to ensure a comprehensive, accurate, reliable and timely report to shareholders/members and other stakeholders that gives a fair and complete picture of a company's financial condition, results and business operations.

**Explanation**

Setting up clear policies and procedures on corporate disclosure that comply with the disclosure requirement as provided in Rule 68 of the Securities Regulation Code (SRC) and other regulations such as those required by the Bangko Sentral ng Pilipinas (BSP), Insurance Commission (IC), if applicable, is essential for comprehensive and timely reporting.

**Recommendation 8.2**

The Company should have a policy requiring all directors and officers to disclose/report to the company any dealings in the company's shares by the said directors and officers within five (5) business days.

**Explanation**

Directors and officers often have access to material inside information on the company. Hence, to reduce the risk that the directors might take advantage of this information, it is crucial for companies to have a policy requiring directors and officers to timely disclose to the company any dealings with the company shares. It is emphasized that the policy is on internal disclosure to the company of any dealings by the director or officer in company shares. This supplements the requirement of Rules 18 and 23 of the Securities Regulation Code.

**Recommendation 8.3**

The company's corporate governance policies, programs and procedures should be contained in its Manual on Corporate Governance, which should be submitted to the Commission and posted on the company's website.

**Explanation**

Transparency is one of the core principles of corporate governance. To ensure better protection of shareholders and other stakeholders' rights, the full disclosure of the company's corporate governance policies, programs and procedures is imperative. This is more efficiently done if the said policies, programs and procedures are contained in one reference document, which is the Manual on Corporate Governance (MCG). The submission of the MCG to the Commission and its posting in company's website ensure easier access by any interested party.

The MCG should contain the following, among others:

a) A policy on the training of directors, including an orientation program for first-time directors and relevant annual continuing training for all directors;

b) Policies and procedure for setting Board and executive remuneration, as well as the level and mix of the same;

c) Policies governing RPTs and other unusual or infrequently occurring transactions, as well as the review and approval of material and significant RPTs, geared towards the prevention of abusive dealings and transactions and the promotion of transparency. These policies include ensuring that transactions occur at market prices and under conditions that protect the rights of all shareholders;

d) Policies on full, fair, accurate and timely disclosure to the public of every material fact or event that occurs in the company, particularly on the acquisition or disposal of significant assets, which could adversely affect the viability or the interest of its shareholders/members and other stakeholders, which includes policy on the appointment an independent party to evaluate the fairness of the transaction price on the acquisition or disposal of assets;

e) Alternative dispute mechanism(s) to resolve intra-corporate disputes in an amicable and effective manner;

f) Policies on formal and transparent board nomination and election policy;

g) Basic shareholder/member rights; and

h) Qualifications and grounds for disqualification of directors.

**Recommendation 8.4**

The company should disclose all relevant information on its corporate governance policies and practices in the Annual Corporate Governance Report, which should be which should be submitted to the Commission, and continuously updated and posted on the company's website.

**Explanation**

The Annual Corporate Governance Report (ACGR) is intended to be a comprehensive report containing all of the company's pertinent corporate governance information. The company is expected to provide regular updates on all the information required in the ACGR.

The ACGR should contain the following disclosures, among others:

a) A policy on disclosure of all relevant and material information on individual board directors and key executives to evaluate their experience and qualifications, and assess any potential and/or actual conflicts of interest that might affect their judgment as prescribed under Rule 12 Annex C of the SRC;

b) Board and executive remuneration, as well as the level and mix of the same;

c) Accurate disclosure to the public of every material fact or event that occurs in the company, particularly on the acquisition or disposal of significant assets, which could adversely affect the viability or the interest of its shareholders/members and other stakeholders, which includes policy on the appointment of an independent party to evaluate the fairness of the transaction price on the acquisition or disposal of assets;

d) The non-audit work, if any, of the External Auditor, the non-audit fees paid to the External Auditor in relation to the total fees paid to him and to the corporation's overall consultancy expenses;

e) The attendance record of the company's directors for the previous year; and

f) Other information that the Commission or other regulatory agencies, may, from time to time require disclosure of.

## 9. STRENGTHENING EXTERNAL AUDITOR'S INDEPENDENCE AND IMPROVING AUDIT QUALITY

**Principle 9**

The company should establish standards for the appropriate selection of an external auditor, and exercise effective oversight of the same to strengthen the external auditor's independence and enhance audit quality.

**Recommendation 9.1**

The Audit Committee should have a robust process for approving and recommending the appointment, reappointment, removal, and fees of the external auditor. The appointment, reappointment, removal, and fees of the external auditor should be recommended by the Audit Committee and approved by the Board of Directors and the shareholders. For the removal or change in the external auditor, the reasons for removal or change should be disclosed to the Commission, the shareholders, and the public through the company website and other required disclosures.

**Explanation**

The appointment, reappointment and removal of the external auditor by the Board's approval, through the Audit Committee's recommendation, and shareholders' approval at shareholders' meetings are actions regarded as good practices. Shareholders' approval clarifies or emphasizes that the external auditor is accountable to the shareholders or to the company as a whole, rather than to the Management whom he may interact with in the conduct of his audit.

**Recommendation 9.2**

The Audit Committee Charter should include the Audit Committee's responsibility on assessing the integrity and independence of external auditors and exercising effective oversight to review and monitor the external auditor's independence and objectivity and the effectiveness of the audit process, taking into consideration relevant Philippine professional and regulatory requirements. The Charter should also contain the Audit Committee's responsibility on reviewing and monitoring the external auditor's suitability and effectiveness on an annual basis.

**Explanation**

The Audit Committee Charter includes a disclosure of its responsibility on assessing the integrity and independence of the external auditor. It establishes detailed guidelines, policies and procedures that may be contained in a separate memorandum or document. Nationally and internationally recognized best practices and standards of external auditing should guide the committee in formulating these policies and procedures.

Moreover, establishing effective communication with the external auditor and requiring them to report all relevant matters aid the Audit Committee in efficiently carrying out its oversight responsibilities.

**Recommendation 9.3**

The company should disclose the nature of non-audit services performed by its external auditor in the Annual Report in the interest of managing potential conflict of interest cases. The Audit Committee should be alert for any potential conflict of interest situations, given the guidelines or policies on non-audit services, which could be viewed as impairing the external auditor's objectivity.

**Explanation**

The company's Audit Committee, in the performance of its duty, oversees the overall relationship of the company with its external auditor. It evaluates and determines the nature of non-audit services, if any, of the external auditor and reviews periodically the proportion of non-audit fees paid to the external auditor in relation to the corporation's overall consultancy expenses.

Allowing the same auditor to perform non-audit services to the company may create a potential conflict of interest. In order to mitigate the risk of possible conflict between the auditor and the company, the company's Audit Committee puts in place robust policies and procedures designed to promote auditor independence in the long run. In formulating these policies and procedures, the committee is guided by nationally and internationally-recognized best practices and regulatory requirements or issuances.

## 10. INCREASING FOCUS ON NON-FINANCIAL AND SUSTAINABILITY REPORTING

**Principle 10**

The Board should ensure that the company discloses material and reportable non-financial and sustainability issues.

**Recommendation 10.1**

The company should have a clear and focused strategy on the disclosure of non-financial information. It should disclose to all shareholders/members and other stakeholders the company's strategic (long-term goals) and operational objectives (short-term goals) as well as impacts of a wide range of sustainability issues, with emphasis on the management of environmental, economic, social and governance (EESG) issues of its business which underpin sustainability.

**Explanation**

As external pressures including resource scarcity, globalization, and access to information continue to increase, the way corporations respond to sustainability challenges, in addition to financial challenges, determines their long-term viability and competitiveness. One way to respond to sustainability challenges is disclosure to all shareholders/members and other stakeholders of the company's strategic (long-term goals) and operational objectives (short-term goals) as well as the impacts of a wide range of sustainability issues.

## 11. PROMOTING A COMPREHENSIVE AND COST-EFFICIENT ACCESS TO RELEVANT INFORMATION

**Principle 11**

The company should maintain a comprehensive and cost-efficient communication channel for disseminating relevant information. This channel is crucial for an informed decision-making by investors, stakeholders and other interested users.

**Recommendation 11.1**

The company should have a website to ensure a comprehensive, cost-efficient, transparent and timely manner of disseminating relevant information to the public.

**Explanation**

The manner of disseminating relevant information to its intended users is as important as the content of information itself. Hence, it is essential for the company to have a strategic and well-organized channel for reporting. A company website that is easily accessible and user-friendly with a dedicated section for corporate governance is considered a practical and cost-efficient way of communication. It can provide timely and up-to-date information relevant to investors and other interested stakeholders.

The company website should contain, among others, the Manual on Corporate Governance, Annual Corporate Governance Report, Board Charter, Committee Charters, the company's Code of Business Conduct and Ethics.

# INTERNAL CONTROL AND RISK MANAGEMENT FRAMEWORKS

## 12. STRENGTHENING INTERNAL CONTROL AND RISK MANAGEMENT SYSTEMS

**Principle**

To ensure the integrity, transparency and proper governance in the conduct of its affairs, the company should have a strong and effective internal control system and enterprise risk management system.

**Recommendation 12.1**

The Company should have an adequate and effective internal control system and an Enterprise Risk Management framework in the conduct of its business, taking into account its size, risk profile, nature and complexity of operations.

**Explanation**

An adequate and effective internal control system and an Enterprise Risk Management (ERM) framework help sustain safe and sound operations as well as implement management policies to attain corporate goals. An effective internal control system embodies the Management's oversight and control culture, risk recognition and assessment, control activities, information and communication, monitoring activities and correcting deficiencies. An effective ERM framework typically includes activities such as, identification, sourcing, measurement, evaluation, mitigation and monitoring of risk.

**Recommendation 12.2**

The Company should have in place an independent internal audit function that provides an independent and objective assurance, and consulting services designed to add value and improve the company's operations.

**Explanation**

A separate Internal Audit (IA) function is essential to monitor and guide the implementation of company policies. It helps the company accomplish its objectives by bringing a systematic and disciplined approach to evaluating and improving the effectiveness of the company's governance, risk management and control functions. The following are the functions of the IA, among others:

a. Provides an independent risk-based assurance service to the Board, Audit Committee and Management, focusing on reviewing the effectiveness of the governance and control processes in (1) promoting the right values and ethics, (2) ensuring effective performance management and accounting in the organization, (3) communicating risk and control information, and (4) coordinating the activities and information among the Board, external and internal auditors, and Management;

b. Performs regular and special audit as contained in the annual audit plan and/or based on the company's risk assessment;

c. Performs consulting and advisory services related to governance and control as appropriate for the organization;

d. Performs compliance audit of relevant laws, rules and regulations, contractual obligations and other commitments, which could have a significant impact on the organization;

e. Reviews, audits and assesses the efficiency and effectiveness of the internal control system of all areas of the company;

f. Evaluates operations or programs to ascertain whether results are consistent with established objectives and goals, and whether the operations or programs are being carried out as planned;

g. Evaluates specific operations at the request of the Board or Management, as appropriate; and

h. Monitors and evaluates governance processes.

A company's IA activity may be a fully resourced activity housed within the organization or may be outsourced to qualified independent third party service providers.

## CULTIVATING A SYNERGIC RELATIONSHIP WITH SHAREHOLDERS/MEMBERS

### 13. PROMOTING SHAREHOLDER/MEMBER RIGHTS

**Principle:**

The company should treat all shareholders/members fairly and equitably, and also recognize, protect and facilitate the exercise of their rights.

**Recommendation 13.1**

The Board should ensure that basic shareholder/member rights are disclosed in the Manual on Corporate Governance.

**Explanation**

It is the responsibility of the Board to adopt a policy informing the shareholders/members of all their rights. Shareholders/members are encouraged to exercise their rights when provided clear-cut processes and procedures for them to follow.

Shareholders and members generally have the following rights, among others:

i. Right to participate in the approval of material corporate acts;
ii. Right to propose the holding of meetings and to include agenda items ahead of the scheduled Annual and Special Shareholders'/Members' Meeting;
iii. Right to nominate candidates to the Board of Directors/Board of Trustees;
iv. Right to be informed of the nomination and removal process; and
v. Right to be informed of the voting procedures that would govern the Annual and Special Shareholders'/Members' Meeting.

Moreover, shareholders have the following additional rights:

i. Pre-emptive right;
ii. Right to dividends; and
iii. Appraisal right.

Shareholders/members are encouraged to participate when given sufficient information prior to voting on fundamental corporate changes such as: (1) amendments to the Articles of Incorporation and By-Laws of the company; and (2) extraordinary transactions, including the transfer of all or substantially all assets that, in effect, results in the sale of the company. Shareholders/members should also be informed before major changes in the business operation of the company happens. In addition, the disclosure and clear explanation of voting procedures, as well as the removal of excessive or unnecessary costs and other administrative impediments, allow for the effective exercise of shareholders'/members' voting rights. Poll voting is highly encouraged as opposed to the show of hands. Proxy voting is also a good practice, including the electronic distribution of proxy materials.

The right to propose the holding of meetings and items for inclusion in the agenda is given to all shareholders and members. However, to prevent the abuse of this right, companies may require that the proposal be made by shareholders or members holding a specified percentage of shares or voting rights. On the other hand, to ensure that minority

shareholders are not effectively prevented from exercising this right, the degree of ownership concentration is considered in determining the threshold.

Lastly, all shareholders and members must be given the opportunity to nominate candidates to the Board of Directors or Trustees, and/or cause the removal of any member thereof in accordance with the existing laws. The procedures of the nomination and removal process are expected to be discussed clearly by the Board. The company is encouraged to fully and promptly disclose all information regarding the expertise, experience and background of the candidates to enable the shareholders and members to study and conduct their own background check as to the candidates' qualification and credibility.

**Recommendation 13.2**

The Board should encourage active shareholder participation by sending the Notice of Annual and Special Shareholders'/Members' Meeting with sufficient and relevant information at least 21 days before the meeting.

**Explanation**

Required information in the notice include, among others, the date, location, meeting agenda and its rationale and explanation, and details of issues to be deliberated upon and approved or ratified at the meeting. Sending the notice in a timely manner allows shareholders/members to plan their participation in the meetings. It is good practice to have the notice posted on the company website.

**Recommendation 13.3**

The Board should encourage active shareholder/member participation by making the result of the votes on matters taken during the most recent Annual or Special Shareholders'/ Members' Meeting publicly available the next working day. In addition, the Minutes of the Annual and Special Shareholders'/Members' Meeting should be available on the company website within five (5) business days from the date of the meeting.

**Explanation**

Voting results include a breakdown of the approving and dissenting votes on the matters raised during the Annual or Special Shareholders'/Members' Meeting. When a substantial number of votes have been cast against a proposal made by the company, it may make an analysis of the reasons for the same and consider having a dialogue with its shareholders/members.

The minutes of the meeting includes the following matters: (1) A description of the voting and vote tabulation procedures used; (2) the opportunity given to shareholders/members to ask questions, as well as a record of the questions asked and the answers received; (3) the matters discussed and the resolutions reached; (4) a record of the voting results for each agenda item; (5) a list of the directors, officers and shareholders/members who attended the meeting; and (6) dissenting opinion on any agenda item that is considered significant in the discussion process.

**Recommendation 13.4**

The Board should make available, at the option of a shareholder/member, an alternative dispute mechanism to resolve intra-corporate disputes in an amicable and effective manner.

**Explanation**

It is important for the shareholders/members to be well-informed of the company's processes and procedures when seeking redress for the violation of their rights. Putting in place proper safeguards ensures suitable remedies for the infringement of shareholders'/members' rights and prevents excessive litigation. The company may also consider adopting in its Manual on Corporate Governance the established and generally accepted Alternative Dispute Resolution procedures.

**Recommendation 13.5**

The Board should establish an Investor Relations Office (IRO) or Customer Relations Office (CRO) or its equivalent to ensure constant engagement and communication with its shareholders/members. The IRO or CRO or its equivalent should be present at every shareholders'/members' meeting.

**Explanation**

Setting up an avenue to receive feedback, complaints and queries from shareholders/members assures their active participation with regard to activities and policies of the company. The IRO/CRO shall have a designated investor/customer relations officer, email address and telephone number. Further, creating an Investor/Customer Relations Program ensures that all information regarding the activities of the company are properly and promptly communicated to shareholders/members.

## DUTIES TO STAKEHOLDERS

### 14. RESPECTING RIGHTS OF STAKEHOLDERS AND EFFECTIVE REDRESS FOR VIOLATION OF STAKEHOLDER'S RIGHTS

**Principle**

The rights of stakeholders established by law, by contractual relations and through voluntary commitments must be respected. Where stakeholders' rights and/or interests are at stake, stakeholders should have the opportunity to obtain prompt effective redress for the violation of their rights.

**Recommendation 14.1**

The Board should identify the company's various stakeholders and promote cooperation between them and the company in creating wealth, growth and sustainability.

**Explanation**

Stakeholders in corporate governance include, but are not limited to the, customers, employees, suppliers, shareholders, members, non-proprietary rights holders, investors, creditors, the community the company operates in, society, government, regulators, competitors, external auditors, etc. In formulating the company's strategic and operational decisions affecting its wealth, growth and sustainability, due consideration is given to those who have an interest in the company and are directly or indirectly affected by its operations.

**Recommendation 14.2**

The Board should establish clear policies and programs to provide a mechanism on the fair treatment, protection and enforcement of the rights of stakeholders.

**Explanation**

In instances where stakeholders' interests are not legislated, the company's voluntary commitments ensure the protection of the stakeholders' rights. The company's business conduct policies ideally include provisions on the company's procedures on dealing with various stakeholders. The company's stakeholders include its customers, resource providers, creditors and the community in which it operates. Fair, professional and objective dealings, as well as clear, timely and regular communication with the various stakeholders ensure fair treatment and better protection of their rights.

Included in the stakeholders are the holders of non-proprietary right. These holders have no participation in the management of the affairs and assets of the corporation, but they have rights over the use and enjoyment of the property of the company subject to the agreed terms and conditions. As such, non-proprietary right holders enjoy contractual rights which must be respected and upheld by the Board and the Management.
Non-proprietary right holders enjoy the following rights:

i. Rights over the use and enjoyment of the corporate property subject to terms and conditions as may be provided in the articles of incorporation, by-laws and membership certificates;

ii. The right to be informed of any material transaction or undertaking by the company, which may substantially affect the use and enjoyment of the corporate property over which the member holds non-proprietary rights; and

iii. The right to seek redress for any violation of the aforementioned rights.

## 15. ENCOURAGING EMPLOYEES' PARTICIPATION

**Principle**

A mechanism for employee participation should be developed to create a symbiotic working environment consistent with the realization of the company's objectives and good corporate governance goals.

**Recommendation 15.1**

The Board should establish policies, programs and procedures that encourage employees to actively participate in the realization of the company's goals and in its governance.

**Explanation**

The establishment of policies and programs covering, among others, the following: (1) health, safety and welfare of employees; (2) manpower training and development; and (3) employee reward/compensation, encourages employees to perform better and motivates them to take a more dynamic role in the corporation. Active participation is further fostered when the company recognizes the firm-specific skills of its employees and their potential contribution in the company's corporate governance. The employees' viewpoint in certain key decisions may also be considered in governance processes through work councils or employee representation in the board.

**Recommendation 15.2**

The Board should set the tone and make a stand against corrupt practices by adopting an anti-corruption policy and program in its Code of Business Conduct and Ethics. Further, the Board should disseminate the policy and program to employees across the organization through orientations and continuous trainings to embed them in the company's culture.

**Explanation**

The adoption of an anti-corruption policy and program endeavors to mitigate corrupt practices such as, but not limited to, bribery, fraud, extortion, collusion, and money laundering. This encourages employees to report corrupt practices and outlines the procedures on how to combat, resist and stop these corrupt practices. Anti-corruption programs are more effective when the Board sets the tone and leads the company in their execution.

**Recommendation 15.3**

The Board should establish a suitable framework for whistleblowing that allows employees to freely communicate their concerns about illegal or unethical practices, without fear of retaliation and to have direct access to an independent member of the Board or a unit created to handle whistleblowing concerns. The Board should be conscientious in establishing the framework, as well as in supervising and ensuring its enforcement.

**Explanation**

A suitable whistleblowing framework sets up the procedures and safe-harbors for complaints of employees, either personally or through their representative bodies, concerning illegal and unethical behavior in the company. One essential aspect of the framework is the inclusion of safeguards to secure the confidentiality of the informer and to ensure protection from retaliation. Further, part of the framework is granting individuals or representative bodies confidential direct access to either an independent director or a unit designed to deal with whistleblowing concerns. Companies may opt to establish an ombudsman to deal with complaints and/or confidential phone and e-mail facilities to receive allegations of illegal and unethical behavior.

## 16. ENCOURAGING SUSTAINABILITY AND SOCIAL RESPONSIBILITY

**Principle**

The company should be socially responsible in all its dealings with the communities in which it operates. It should ensure that its interactions serve its environment and

stakeholders in a positive and progressive manner that is fully supportive of its comprehensive and balanced development.

**Recommendation 16.1**

The company should recognize and place an importance on the interdependence between business and society, and promote a mutually beneficial relationship that allows the company to grow its business, while contributing to the advancement of the society where it operates.

**Explanation**

The company's value chain consists of inputs to the production process, the production process itself and the resulting output. Sustainable development means that the company not only complies with existing regulations, but also voluntarily employs value chain processes which take into consideration economic, environmental, social and governance issues and concerns. In considering sustainability concerns, the company plays an indispensable role alongside the government and civil society in contributing solutions to complex global challenges like poverty, inequality, unemployment and climate change.